



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2012-0751; FRL- 9763-9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Huntington-Ashland, WV-KY-OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a request submitted on February 12, 2012, by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), to redesignate the Kentucky portion of the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio fine particulate matter (PM_{2.5}) nonattainment area (hereafter referred to as the “Huntington-Ashland Area” or “Area”) to attainment for the 1997 Annual PM_{2.5} National Ambient Air Quality Standards (NAAQS). The Huntington-Ashland Area is composed of Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. EPA’s approval of the redesignation request is based on the determination that Kentucky has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA or Act). EPA is approving a revision to the Kentucky State Implementation Plan (SIP) to include the 1997 Annual PM_{2.5} maintenance plan for the Kentucky portion of the Huntington-Ashland Area. EPA is also approving the on-road

motor vehicle insignificance finding for direct PM_{2.5} and nitrogen oxides (NO_x) for the Kentucky portion of the Huntington-Ashland Area.

EFFECTIVE DATE: This rule will be effective on [insert after the date of publication in the **Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0751. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-

8960. Joel Huey may be reached by phone at (404) 562-9104 or via electronic mail at huey.joel@epa.gov.

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I. What is the Background for the Actions?

As stated in EPA's proposed approval notice published on November 19, 2012 (77 FR 69409), this redesignation action addresses the Kentucky portion of the Huntington-Ashland Area's status solely with respect to the 1997 Annual PM_{2.5} NAAQS, for which designations were finalized on November 13, 2009 (74 FR 58688). On February 12, 2012,¹ the Commonwealth of Kentucky, through DAQ, submitted a request to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual PM_{2.5} NAAQS, and for EPA approval of the Kentucky SIP revision containing a maintenance plan for the Area. In the November 19, 2012, notice, EPA proposed to take the following separate but related actions, some of which involve multiple elements: (1) to redesignate the Kentucky portion of the

¹ Although EPA received Kentucky's request to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual PM_{2.5} NAAQS on February 12, 2012, the official SIP submittal date and state effective date is the date of the submittal cover letter, February 9, 2012.

Huntington-Ashland Area to attainment for the 1997 Annual PM_{2.5} NAAQS, and (2) to approve into the Kentucky SIP, under section 175A of the CAA, Kentucky's 1997 Annual PM_{2.5} NAAQS maintenance plan, including the on-road motor vehicle insignificance finding for direct PM_{2.5} and NO_x for the Kentucky portion of the Huntington-Ashland Area. EPA received no comments, adverse or otherwise, on the November 19, 2012, proposed rulemaking. As noted in the November 19, 2012, proposal notice, on April 11, 2012, EPA approved, under section 172(c)(3) of the CAA, Kentucky's 2002 base-year emissions inventory for the Huntington-Ashland Area as part of the SIP revision submitted by the Commonwealth to provide for attainment of the 1997 PM_{2.5} NAAQS in the Area. EPA received no comments, adverse or otherwise, on the proposal related to approval of Kentucky's 2002 base-year emissions inventory.

EPA is now taking final action on the three actions identified above. Additional background for today's action is set forth in EPA's November 19, 2012, proposal and is summarized below.

EPA has reviewed the most recent ambient monitoring data, which indicate that the Huntington-Ashland Area continues to attain the 1997 Annual PM_{2.5} NAAQS beyond the submitted 3-year attainment period of 2008-2010. As stated in EPA's November 19, 2012, proposal notice, the 3-year design value of 13.1 µg/m³ for 2008-2010 meets the NAAQS of 15.0 µg/m³. Quality assured and certified data in EPA's Air Quality System (AQS) for 2011 provide a 3-year design value of 12.1 µg/m³ for 2009-2011. Furthermore, preliminary monitoring data for 2012 indicate that the Area is continuing to attain the 1997 Annual PM_{2.5} NAAQS. The 2012 preliminary data are available AQS although not yet quality assured and certified.

II. What are the Actions EPA is Taking?

In today's rulemaking, EPA is approving: (1) Kentucky's redesignation request to change the legal designation of Boyd County and a portion of Lawrence County in Kentucky from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS, and (2) Kentucky's 1997 Annual PM_{2.5} maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the Kentucky portion of the Huntington-Ashland Area. The maintenance plan is designed to demonstrate that the Kentucky portion of the Huntington-Ashland Area will continue to attain the 1997 Annual PM_{2.5} NAAQS through 2022. EPA's approval of the redesignation request is based on EPA's determination that the Kentucky portion of the Huntington-Ashland Area meets the criteria for redesignation set forth in CAA, sections 107(d)(3)(E) and 175A, including EPA's determination that the Kentucky portion of the Huntington-Ashland Area has attained the 1997 Annual PM_{2.5} NAAQS. EPA's analyses of Kentucky's redesignation request, maintenance plan, and emissions inventory are described in detail in the November 19, 2012, proposed rule (77 FR 69409).

Consistent with the CAA, the maintenance plan that EPA is approving also includes an on-road motor vehicle insignificance finding for direct PM_{2.5} and NO_x for the Kentucky portion of the Huntington-Ashland Area. In this action, EPA is approving this insignificance finding for the purposes of transportation conformity.

III. Why is EPA Taking These Actions?

EPA has determined that the Kentucky portion of the Huntington-Ashland Area has attained the 1997 Annual PM_{2.5} NAAQS and has also determined that all other criteria for the redesignation of the Kentucky portion of the Huntington-Ashland Area from nonattainment to

attainment of the 1997 Annual PM_{2.5} NAAQS have been met. *See* CAA section 107(d)(3)(E). One of those requirements is that the Kentucky portion of the Huntington-Ashland Area has an approved plan demonstrating maintenance of the 1997 Annual PM_{2.5} NAAQS. EPA is also taking final action to approve the maintenance plan for the Kentucky portion of the Huntington-Ashland Area as meeting the requirements of sections 175A and 107(d)(3)(E) of the CAA. In addition, EPA is approving the on-road motor vehicle insignificance finding for direct PM_{2.5} and NO_x for the Kentucky portion of the Huntington-Ashland Area. The detailed rationale for EPA's findings and actions are set forth in the proposed rulemaking and in other discussion in this final rulemaking.

IV. What are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of Boyd County and a portion of Lawrence County in Kentucky from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. EPA is modifying the regulatory table in 40 CFR 81.318 to reflect a designation of attainment for these counties. EPA is also approving, as a revision to the Kentucky SIP, the Commonwealth's plan for maintaining the 1997 Annual PM_{2.5} NAAQS in the Kentucky portion of the Huntington-Ashland Area through 2022. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 Annual PM_{2.5} NAAQS and establishes an on-road motor vehicle insignificance finding for direct PM_{2.5} and NO_x for the Kentucky portion of the Huntington-Ashland Area.

V. Final Action

EPA is taking final action to approve the redesignation and change the legal designation of Boyd County and a portion of Lawrence County in Kentucky from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. Through this action, EPA is also approving into the Kentucky SIP the 1997 Annual PM_{2.5} maintenance plan for the Kentucky portion of the Huntington-Ashland Area, which includes an on-road motor vehicle insignificance finding for direct PM_{2.5} and NO_x for the Kentucky portion of the Huntington-Ashland Area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Commonwealth of various requirements for the Kentucky portion of the Huntington-Ashland Area. For these reasons, EPA finds good cause under 5 U.S. C. 553(d)(3) for this action to become effective on the date of publication of this action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: December 13, 2012.

Gwendolyn Keyes Fleming,
Regional Administrator,
Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S - Kentucky

2. Section 52.920(e) is amended by adding a new entry “1997 Annual PM_{2.5} Maintenance Plan for the Kentucky portion of the Huntington-Ashland Area” at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Kentucky Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
**	**	**	*	
1997 Annual PM _{2.5} Maintenance Plan for the Kentucky portion of the Huntington-Ashland Area	Boyd County and Lawrence County (part) (Kentucky portion of the Huntington-Ashland WV-KY-OH Area)	2/9/12	[Insert date of publication in Federal Register] [Insert citation of publication]	For the 1997 Annual PM _{2.5} NAAQS

PART 81-[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. In § 81.318, the table entitled “Kentucky- PM_{2.5} (Annual NAAQS)” is amended under “Huntington-Ashland, WV-KY-OH” by revising the entries for “Boyd County” and “Lawrence County (part)” to read as follows:

§ 81.318 Kentucky.

* * * * *

Kentucky- PM _{2.5} - (Annual NAAQS)		
Designated area	Designation ^a	
	Date ¹	Type
Huntington-Ashland, WV-KY-OH:		
* *	* *	* * *
Boyd County	This action is effective [Insert date of publication in the Federal Register]	Attainment
Lawrence County (part)	This action is effective [Insert date of publication in the Federal Register]	Attainment
* *	* *	* * *

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

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[FR Doc. 2012-30954 Filed 12/21/2012 at 4:15 pm; Publication Date: 12/26/2012]